IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.192 OF 2006

IN

CHAMBER SUMMONS NO. 1123 OF 2005

IN

SUIT NO. 878 OF 1978

Gujarat Saving Units
Pvt. Ltd., .. Plaintiffs.

vs.

Doburg Lager Breweries
(P) Ltd., & Ors. .. Defendants.

And

M/s. Shaw Wallace & Co. Ltd., .. Respondents.

Mr. P. Kawali i/by Shantilal & Co.
for plaintiffs.
Mr. D.R. Mehta i/by D. Liladhar & Co.
for defendant nos. 1,2, 3(a) to 3(c) & 4.
Mr. Milind Vasudeo i/by Khaitan & Jayakar
for defendant no. 7
I.G. Oza, Court Commissioner is present.

CORAM : S.U.KAMDAR, J.

DATE : 27th January,2006.

P.C.

. By consent of the parties, the motion is taken up on Board and called out.

2. The learned counsel for defendant no. 7 seeks leave to withdraw the notice of motion and chamber summons no. 1123 of 2005. Both dismissed as withdrawn. However, it is clarified that it will be open to defendant no. 7 to contend before the court at the hearing of the suit that in view of the fact that the defendant no.. 1 has already merged with the respondent the present suit is not maintainable as against the defendant no. 7 as non-joinder of the necessary and proper party in the suit. The Commissioner is directed to continue recording of evidence and record the evidence of defendant no. 7. The defendant no. 7 will also make himself available on 7.2.2006. The defendant no. 7 is also permitted to cross-examine the plaintiff and the plaintiff will make his witnesses available as soon as the evidence of defendant no. 7 is concluded.